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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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Federal Communications Commission
Office of the Secretary

In the Matter of

Amendment of Rules Governing
Procedures to Be Followed When
Formal Complaints Are Filed Against
Common Carriers

CC Docket No. 92-26

COMMENTS OF CENTRAL TELEPHONE COMPANY

I. Introduction

Central Telephone Company ("Centel"), on behalf of itself and its affiliated local exchange telephone companies, hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking, FCC 92-59, released March 12, 1992 ("Notice") in the above-referenced proceeding. In the Notice, the Commission proposes to modify its rules governing formal complaints against common carriers. In particular, the Commission proposes to change filing deadlines, eliminate certain pleading opportunities, and modify the discovery process. The Commission's goal in proposing these modifications is "to facilitate timelier resolution of formal complaints by eliminating procedures and pleading requirements that have caused unintended and unnecessary delays." Notice at ¶ 1.

Centel applauds the Commission's efforts to expedite the resolution of formal complaints against common carriers. Centel has been involved in complaint proceedings which have taken years to resolve despite the best intentions of both the Commission and

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the parties. Therefore, subject to the exceptions noted below, Centel supports the Commission's initiative and believes that many of the procedural modifications proposed in the Notice will facilitate timelier resolution of complaints. Set forth below are Centel's comments on two of the Commission's proposals.

II. Discussion

A. The Period for Filing Answers Should Not Be Reduced.

While it supports most of the proposed procedural modifications, Centel does not support the Commission's proposal to reduce the permissible time for a defendant to file an answer to a complaint from 30 to 20 days from the date of service. Notice at ¶ 8. This proposal would severely disadvantage defendants in complaint proceedings without materially expediting the resolution of complaints.

A defendant in a complaint proceeding needs the entire 30-day period to investigate the facts, to determine whether the complaint may be meritorious and the case settled and, if not, to prepare an adequate defense to the complaint. Investigating a complaint is time consuming and difficult, especially where the complaint involves matters of great complexity and includes allegations covering a period of several years.

In order to properly investigate a complainant's claims, a defendant must ascertain and interview the individuals who are familiar with the facts. At times, those individuals are no longer with the company and have to be tracked down. A defendant must also locate and review all relevant documents, many of which

may be in off-site storage or otherwise not readily obtainable. A defendant must then consult with counsel, who requires sufficient time to research the legal issues raised by the claims and the facts uncovered during the course of the investigation. A written response must then be prepared and reviewed by company personnel.

The existing 30-day period is not an excessive amount of time in which to perform these tasks, especially considering that a complainant has up to two years to investigate and craft a complaint.^{1/} It should also be noted that a defendant frequently has no warning that a complaint is being contemplated. As a result, a defendant has no time, in advance of the filing of a complaint, to investigate or otherwise prepare to respond to the complainant's claims.

The Commission notes that the proposed 20-day deadline for an answer to a complaint coincides with that required under the federal rules governing litigation in court. Id. Unlike the Commission, however, the federal courts routinely grant extensions of time in which to file answers to complaints.^{2/} Unless it intends to institute a similar practice, which would be

^{1/} Section 415 of the Communications Act requires complaints to be filed against carriers within two years from the time the cause of action accrues. 47 U.S.C. § 415.

^{2/} In federal court litigation, it is also established practice for counsel for the parties to stipulate to an extension of time for a defendant to file an answer or other responsive pleading. Stipulations are entered into readily because counsel recognize that the court routinely grants extensions of time.

inconsistent with the proposal, the Commission should not reduce the time for defendants to file answers.

Finally, as stated above, reducing the existing 30-day period for defendants to file answers would not materially expedite the resolution of complaints. As the Commission is aware, there are many causes for the delay in resolving complaints. The Commission itself cites staffing and other resource limitations, case complexity and other litigation-related issues. Notice at ¶ 1. The 10-day difference between the proposed 20-day deadline and the existing 30-day deadline would not expedite this process, and could actually delay it as extensions of time are requested or amended answers are filed. Accordingly, a reduction in the existing time period is not warranted and would not serve the public interest.

B. Centel Supports the Commission's Bifurcation Proposal.

In an effort to minimize the delay associated with the discovery process, the Commission proposes that, unless otherwise directed by its staff, no discovery regarding alleged damages will be permitted until after an initial finding of liability. Notice at ¶ 13. In effect, this proposal would bifurcate formal complaint proceedings by holding in abeyance issues involving damages until liability has been established. Centel supports the adoption of this proposal.

Centel's experience with discovery in formal complaint proceedings has been consistent with that noted by the Commission. Centel agrees that a significant amount of discovery

centers on developing facts that would "prove or disprove injury or damages incurred as a consequence of a violation of the Communications Act or Commission requirements." Notice a ¶ 13. Indeed, this is frequently the case in complaint proceedings involving claims against carriers for the recovery of alleged overcharges. Centel also agrees with the Commission that the time, effort and resources expended by the parties on discovery issues related to damages is effectively wasted if no liability is found. Id. Thus, holding the damages issues in abeyance at the initial stage in the proceeding could expedite the resolution of the basic issue of liability.

Recognizing that bifurcated proceedings may impose some burdens on parties, the Commission proposes to give the parties a period of time, after liability is found, in which to engage in settlement negotiations or submit damage claims to voluntary alternative dispute resolution ("ADR") mechanisms prior to further proceedings on damages. Id. Centel does not oppose this proposal since, in some cases, it could eliminate the need for further Commission proceedings.

Centel is concerned, however, that such a procedure may create additional delays in resolving complaints. To prevent this, the Commission should establish procedures whereby parties electing not to participate in settlement negotiations or ADR mechanisms would waive the allotted time period and proceed directly to an adjudication of the damages issue. For example, the Commission could give parties 5 calendar days to decide


whether to participate in settlement negotiations or ADR mechanisms. If the parties do not, they should be required to proceed with discovery on the damages issue. In addition, if this proposal is adopted, the Commission should make it clear that parties retain the right to litigate, and obtain an appealable order on, the issue of damages.

III. Conclusion

Centel supports the Commission's goal of facilitating timelier resolution of formal complaints. While it does not support the adoption of the Commission's proposal to reduce the time for filing answers to complaints from 30 to 20 days, Centel believes that the Commission's other proposals will help to eliminate unnecessary procedures and requirements that have caused unintended delays in the resolution of formal complaints.

Respectfully submitted,

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